IN THE

SUPREME COURT OF THE UNITED STATES

TERM 198_

NO. _____

JESSIE MCLEOD,

PETITIONER,

-VS-

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

TO THE

SUPREME COURT OF THE

STATE OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SUMTER COUNTY

ERNEST A. FINNEY, JR., JUDGE

OPINION NO. 21729

FILED JUNE 10, 1982

AFFIRMED IN PART;

REVERSED IN PART;

SAMUEL R. HASKELL, OF SUMTER, FOR APPELLANT.

ATTORNEY GENERAL DANIEL R. MCLEOD AND SENIOR ASSISTNAT ATTORNEY GENERAL BRIAN P. GIBBES, BOTH OF COLUMBIA; AND SOLICITOR R. KIRK MCLEOD, OF SUMTER, FOR RESPONDENT.

PER CURIAM: APPELLANT WAS CONVICTED OF RECEIVING STOLEN GOODS, CONSPIRACY, AND ACCESSORY AFTER THE FACT OF A FELONY. APPELLANT'S

CO-DEFENDANT WAS CONVICTED OF CONSPIRACY AND ACCESSORY AFTER THE FACT OF A FELONY.

THE EVIDENCE AT TRIAL WAS SUFFICIENT TO SHOW THAT THE CO-DEFENDANTS CONSPIRED TO DEAL IN STOLEN GOODS AND THAT APPELLANT RECEIVED GOODS WHICH HE KNEW WERE STOLEN. NO ERROR OF LAW AFFECTS APPELLANT'S CONVICTIONS FOR CONSPIRACY AND RECEIVING STOLEN GOODS. WE AFFIRM THE LOWER COURT'S JUDGMENT ON THESE CHARGES.

WITH RESPECT TO THE CONVICTION AS AN ACCESSORY, APPELLANT DID NOT DEAL WITH THE PRINCIPAL FELONS, HEREFORE, WE REVERSE HIS CONVICTION AS AN ACCESSORY ON THE SAME GROUND ON WHICH WE REVERSED HIS CO-DEFENDANT'S CONVICTION. STATE V. HODGE, OPINION NO. 21728, FILED JUNE 10, 1982.

WE REVERSE APPELLANT'S CONVICTION AS AN ACCESSORY AFTER THE FACT OF A FELONY; OTHERWISE, THE JUDGMENT BELOW IS AFFIRMED.

S/ J. WOODROW LEWIS C.J.

S/ BRUCE LITTLEJOHN A.J.

S/ J. B. NESS A.J.

S/ GEORGE T. GREGORY, JR. A.J.

S/ DAVID W. HARWELL A.J.

QUESTION ONE

THE TRIAL COURT ERRED IN FAILING TO GRANT THE DEFENSE MOTION FOR A MISTRIAL ON THE GROUNDS THAT THE TWO DEFENDANTS WERE REPRESENTED BY SINGLE COUNSEL WHO HAD A CONFLICT OF INTEREST.

BOTH CO-DEFENDANTS WERE REPRESENTED BY A SINGLE ATTORNEY. WHILE PRIOR TO TRIAL IT APPEARED THAT THERE WOULD NOT BE A CONFLICT OF INTEREST, THE STATE'S CASE DEVELOPED UPON DIFFERENT FACTS FOR EACH DEFENDANT. THE PROSECUTION THEORY AGAINST DEFENDANT HODGE COULD HAVE BEST BEEN ATTACKED FROM THE STANDPOINT OF INSUFFICIENCY OF EVIDENCE, WHILE DEFENDANT MCLEOD HAD TO ATTACK THE CREDIBILITY OF THE STATE'S WITNESSES. THE LONE DEFENSE ATTORNEY WAS FORCED TO NEGLECT AND CAST BLAME ON DEFENDANT MCLEOD IN ORDER TO ACTIVELY PURSUE A DEFENSE FOR DEFENDANT HODGE.

WHEN A CONFLICT OF INTEREST BECAME APPARENT TO THE DEFENSE COUNSEL,[1] A MOTION FOR

MISTRIAL WAS TIMELY MADE AND DENIED. (TR. P. 73-76) ON IDENTICAL GROUNDS, A MOTION FOR MISTRIAL WAS MADE AND DENIED AT THE CLOSE OF THE STATE'S CASE AND AT THE END OF THE TRIAL. (TR. P. 92-93, 200)

OF COURSE, WHETHER AN ACTUAL CONFLICT OF INTEREST EXISTED IS IRRELEVANT UNDER HOLLOWAY V. ARKANSAS, 435 U.S. 475, 487 (1978).

AS WAS STATED IN CUYLER V. SULLIVAN,[2] U.S. 100 S.CT. 1708, 1717 (1980):

> IN HOLLOWAY, A SINGLE PUBLIC DEFENDER REPRESENTED THREE DEFENDANTS AT THE SAME TRIAL. THE TRIAL COURT REFUSED TO CONSIDER THE APPOINTMENT OF SEPARATE COUNSEL DESPITE THE DEFENSE LAWYER'S TIMELY AND REPEATED ASSERTIONS THAT THE INTERESTS OF HIS CLIENTS CONFLICTED. THIS COURT RECOGNIZED THAT A LAWYER FORCED TO REPRESENT CO-DEFENDANTS WHOSE INTERESTS CONFLICT CANNOT PROVIDE THE ADEQUATE LEGAL ASSISTANCE REQUIRED BY THE SIXTH AMENDMENT. ID AT 481-482, 98 S.CT. AT 1177. GIVEN THE TRIAL COURT'S FAILURE TO RESPOND TO TIMELY OBJECTIONS, HOWEVER, THE COURT DID NOT CONSIDER WHETHER THE ALLEGED CONFLICT ACTUALLY EXISTED. IT SIMPLY HELD THAT THE TRIAL COURT'S ERROR UNCONSTITUTIONALLY ENDANGERED THE RIGHT TO COUNSEL. ID., AT 483-487, 98 S.CT. AT 1178-1180. HOLLOWAY REQUIRES

STATE TRIAL COURTS TO INVESTIGATE TIMELY OBJECTIONS TO MULTIPLE REPRESENTATION (EMPHASIS ADDED.)

THE FACT THAT THE DEFENDANTS IN THE IMMEDIATE CASE WERE REPRESENTED BY RETAINED COUNSEL, INSTEAD OF APPOINTED COUNSEL, IS IRRELEVANT. . . . . CUYLER, SUPRA AT 1716.

IN THIS CASE, DEFENSE COUNSEL REQUESTED A MISTRIAL, BASED ON HIS REPRESENTATIONS AS AN OFFICER OF THE COURT REGARDING A CONFLICT OF INTERESTS, SO THAT SEPARATE COUNSEL COULD BE ARRANGED FOR EACH DEFENDANT. AS THE SUPREME COURT STATED IN HOLLOWAY:

> ... SINCE THE DECISION IN GLASSER, MOST COURTS HAVE HELD THAT AN ATTORNEY'S REQUEST FOR THE APPOINTMENT OF SEPARATE COUNSEL, BASED ON HIS REPRESENTATIONS AS AN OFFICER OF THE COURT REGARDING A CONFLICT OF INTERESTS, SHOULD BE GRANTED. (CITATIONS OMITTED). IN SO HOLDING, THE COURTS HAVE ACKNOWLEDGED AND GIVEN EFFECT TO SEVERAL INTERRELATED CONSIDERATIONS. AN ATTORNEY REPRESENTING TWO DEFENDANTS IN A CRIMINAL MATTERS IS IN THE BEST POSITION PROFESSIONALLY AND ETHICALLY TO DETERMINE WHEN A CONFLICT OF INTEREST EXISTS OR WILL PROBABLY

DEVELOP IN THE COURSE OF A TRIAL. (CITATION OMITTED). SECOND, DEFENSE ATTORNEYS HAVE THE OBLIGATION, UPON DISCOVERING A CONFLICT OF INTERESTS, TO ADVISE THE COURT AT ONCE OF THE PROBLEM. (CITATION OMITTED). FINALLY, ATTORNEYS ARE OFFICERS OF THE COURT, AND WHEN THEY ADDRESS THE JUDGE SOLEMNLY UPON A MATTER BEFORE THE COURT, THEIR DECLARATION ARE VIRTUALLY MADE UNDER OATH. (CTIATION OMITTED) (EMPHASIS DELETED IN ORIGINAL). WE FIND THESE CONSIDERATIONS PERSUASIVE.

IBID, AT 485, 486.

IN ADDITION TO THE AUTOMATIC REVERSAL MANDATED BY HOLLOWAY, THE TRIAL COURT FAILED TO QUESTION THE DEFENDANTS PERSONALLY ABOUT THE HAZARDS OF JOINT REPRESENTATION. THIS ALSO WOULD MANDATE REVERSAL. SEE, UNITED STATES V. ALVAREZ, 580 F.2D 1251 (5TH CIR. 1978). UNITED STATES V. DOLAN, 570 F.2D 1177, 1181 (3RD CIR. 1978). IT WAS HELD IN COLON V. FOGG, 603 F.2D 403, 407 (2ND CIR. 1979):

IN ORDER TO ASSURE A JOINTLY-REPRESENTED DEFENDANT OF THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT, A TRIAL JUDGE MUST EXPLORE

> WITH HIM PERSONALLY THE INHERENT POTENTIAL FOR A CONFLICT OF INTEREST IN THE JOINT REPRESENTATION. (EMPHASIS ADDED).

LIKEWISE, IN PEOPLE V. BAFFI, 49 N.Y.2D 820, 427 N.Y.S.2D 615, 616 (1980) THE NEW YORK COURT OF APPEALS STATED:

> ALTHOUGH THE TRIAL COURT MAY PLACE SOME RELIANCE ON THE STATEMENT OF COUNSEL THAT HE HAS INFORMED HIS CLIENTS OF THE PITFALLS OF JOINT REPRESENTATION AND GOTTEN THEIR CONSENT (CITATION OMITTED), SUCH A STATEMENT ALONE DOES NOT RELIEVE THE TRIAL COURT OF THE OBLIGATION INDEPENDENT OF THE ATTORNEY'S OBLIGATION (CITATION OMITTED) TO PROBEL THE DEFENDANT'S AWARENESS OF THE RISKS ...

IT IS RESPECTFULLY SUBMITTED BY APPELLANT THAT EVEN IF THERE HAD NOT BEEN A HOLLOWAY ERROR, THE FAILURE OF THE TRIAL COURT TO PERSONALLY QUESTION THE DEFENDANTS ABOUT THE HAZARDS OF JOINT REPRESENTATION WOULD MANDATE REVERSAL.

UNDER HOLLOWAY THE DEGREE OF PREJUDICE SUFFERED BY THE DEFENDANTS IS IRRELEVANT. NOR CAN THE REQUIREMENT OF JOINT REPRESENTATION OVER OBJECTION EVER BE HARMLESS ERROR.

IBID, AT 489. ALL THAT MATTERS UNDER HOLLOWAY IS WHETHER THE DEFENSE ATTORNEY REQUESTED THAT SEPARATE COUNSEL BE APPOINTED, BASED UPON AN ALLEGED CONFLICT OF INTEREST. IF SUCH A REQUEST IS DENIED BY THE TRIAL COURT, A REVERSAL AND NEW TRIAL IS MANDATED.

FOOTNOTES:

[1] THE TRAIL COURT NOTED THAT THERE WAS A POTENTIAL CONFLICT. (TR. P. 74, LINES 2-7)

[2] NEITHER CUYLER OR VANCE V. STATE, S.C., 268 S.E.2D 275 (1980) IS APPLICABLE TO THE IMMEDIATE CASE. IN BOTH CUYLER AND VANCE THE ISSUE WAS THE DUTY OF THE TRIAL COURT TO RAISE THE POSSIBILITY OF IMPROPER JOINT REPRESENTATION OF CO-DEFENDANTS SUA SPONTE.

(THE JURY RETIRES TO THE JURY ROOM AND COURT STANDS IN RECESS FOR A SHORT PERIOD, AFTER WHICH THE TRIAL RESUMED AS FOLLOWS.)

BY THE COURT: YES SIR, MR. HARNESS? THERE IS SOMETHING YOU WANT TO PUT ON THE RECORD?

BY ATTY. HARNESS: I WOULD LIKE TO PUT ON THE RECORD THAT I WOULD LIKE TO MAKE A MOTION FOR A MISTRIAL AT THIS POINT DUE TO THE TESTIMONY OF THE LAST WITNESS ON THE STAND. IT APPEARS TO ME THAT I MAY HAVE SOME CONFLICT WITH REPRESENTING BOTH GENTLEMEN IN THIS CASE. I WOULD RESPECTFULLY REQUEST THAT THE COURT GRANT US A MISTRIAL SO THAT WE WOULD HAVE AN OPPORTUNITY TO GET A SECOND COUNSEL IN TO REPRESENT EITHER ONE OF THE PARTIES AND TO BE SURE THAT JUSTICE IS DONE IN THIS CASE.

BY THE COURT: ALL RIGHT. WHAT IS THE STATE'S POSITION, MR. BURCHSTEAD?

BY SOL. BURCHSTEAD: IF IT PLEASE THE COURT, I UNDERSTAND THAT THE COURT HAS

MADE A DETERMINATION THAT THERE IS A CONFLICT OF INTEREST---

BY THE COURT: I HAVE NOT MADE A DETERMINATION, BUT I INDICATED TO YOU GENTLEMEN DURING THE RECESS THAT IN VIEW OF

END OF PAGE 73 OF TRANSCRIPT

THE TESTIMONY OF THE WITNESS, MR. GREGORY, THAT I HAD SOME GRAVE CONCERN THAT THERE MAY BE, AND I ADVISED MR. HARNESS, AS AN OFFICER OF THE COURT, THAT I HAD SOME CONCERNS-- IN YOUR PRESENCE---

BY ATTY. HARNESS: YES SIR---

BY THE COURT: ---THAT I HAD SOME CONCERN ABOUT THE POTENTIAL CONFLICT.

BY SOL. BURCHSTEAD: MY CONCERN WAS THIS, THAT THE STATEMENT OF GREGORY GREGORY AND THE STATEMENT OF DARRYL PIERCE, AS WELL AS SOME OTHER STATEMENTS, HAVE BEEN AVAILABLE TO MR. HARNESS BACK AS FAR BACK AS JANUARY OF THIS YEAR, AND THEY HAVE BEEN AWARE OF WHAT TESTIMONY WOULD BE ELICITED FROM THESE WITNESSES; AND THE DEFENDANTS PROCEEDED TO TRIAL WITH ONE COUNSEL AND I THINK IT WOULD BE GROSSLY UNFAIR TO THE STATE TO HAVE HIM CLAIM AS A REVELATION SUDDENLY THAT THERE IS A CONFLICT OF INTEREST WHEN THEY KNEW WHAT THE TESTIMONY WAS GOING TO

BE OF THESE WITNESSES BEFORE THE TRIAL BEGAN.

BY THE COURT: ALL RIGHT, ANYTHING YOU WOULD LIKE TO SAY, MR. HARNESS?

BY ATTY. HARNESS: YOUR HONOR, WHILE STATEMENTS WERE PROVIDED, THERE HAS BEEN SOME CONFLICT IN THE STATEMENTS THAT WERE PROVIDED, VERY KINDLY, BY THE SOLICITOR'S OFFICE AND TAKEN OF THE YOUNG BOYS BACK WHEN THEY PICKED THEM UP IN DECEMBER, AND I HAD THOUGHT LONG AND HARD BEFORE I CAM BEFORE THE BAR

END OF PAGE 74 OF TRANSCRIPT

ABOUT IF THERE WAS ANY CONFLICT AND IT APPEARED TO ME, HONESTLY, THAT THERE WAS NONE EVEN WITH THE STATEMENTS THAT WERE PROVIDED.

BY THE COURT: AS I PERCEIVE THE TESTIMONY AT THIS POINT IN THESE PROCEEDINGS, AND I DON'T KNOW WHAT ELSE IS GOING TO COME DOWN, THE TESTIMONY OF MR. GREGORY INDICATED THAT MR. HODGE DID NOT AGREE TO BUY ANYTHING AND IT DOES NOT IMPLICATE HIM AT THIS POINT IN THESE PROCEEDINGS AND THAT IT DOES--IN FACT YOUR CROSS EXCAMINATION OF MR. GREGORY EMPHASIZED THAT POINT. NOW WE HAVE A SITUATION WHERE YOU'VE GOT TWO DEFENDANTS; ONE WHO, BY YOUR QUESTIONS, INDICATES NO INVOLVEMENT, THE OTHER ONE WHICH INDICATES THAT THERE IS SOME INVOLVEMENT. ALL RIGHT---

BY SOL. BURCHSTEAD: WELL, YOUR HONOR---

BY THE COURT: YES SIR?

BY SOL. BURCHSTEAD: OF COURSE, IF THAT IS YOUR VIEW OF THE LAW, EVEN THOUGH

THERE MIGHT NOT BE ANY CONFLICT, IT WOULD BE THE STATE'S POSITION THAT THIS TESTIMONY OF GREG GREGORY, TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE, IS THAT STANLEY HODGE HAD A REASONABLE SUSPICION THAT-- HAD REASON TO BELIEVE THAT THIS PROPERTY WAS STOLEN, WHICH WILL BE FURTHER BROUGHT OUT BY SOME FURTHER TESTIMONY, AND HE ASSISTED THESE DEFENDANTS IN DISPOSING OF THESE GOODS AND PARTICIPATED WITH JESSIE MCLEOD IN RECEIVING THE STOLEN GOODS.

BY THE COURT: ALL RIGHT, SIR. AT THIS POINT IN THE

END OF PAGE 75 OF TRANSCRIPT

PROCEEDINGS, I HAVE NOT HEARD ALL OF THE TESTIMONY. I WOULD RESPECTFULLY DENY THE MOTION FOR A MISTRIAL. THERE ARE COUNTS IN HERE WHERE THE TESTIMONY WOULD GO--IT DOES GIVE ME SOME CONCERN AND I, FRANKLY, EXPRESSED MY CONCERN TO YOU GENTLEMEN BECAUSE I DISLIKE THE IDEA THAT THERE EVEN BE THE APPEARANCE OF SOME CONFLICT, BUT I AM GOING TO READ THE STATEMENTS AND I MAY RECONSIDER YOUR MOTION AT THE CONCLUSION OF THE STATE'S CASE. I HAVE NOT READ THE STATEMENTS. THEY HAVE NOT BEEN FURNISHED TO ME BUT I AM GOING TO GET THEM AND WILL READ THEM AND WILL RE-ENTERTAIN YOUR MOTION AT THE CONCLUSION OF THE STATE'S CASE.

END OF PAGE 76 OF TRANSCRIPT

(COURT STANDS IN RECESS FOR LUNCH UNTIL 2:30 P.M. AT WHICH TIME THE TRIAL CONTINUED AS FOLLOWS)

BY THE COURT: ARE YOU READY TO GO, MR. HARNESS?

BY ATTY. HARNESS: YES, YOUR HONOR.

BY THE COURT: READY TO GO, MR. BURCHSTEAD?

BY SOL. BURCHSTEAD: YES SIR. THE STATE RESTS AND WE

END OF PAGE 92 OF TRANSCRIPT

CAN GO AHEAD AND TAKE CARE OF ANY MOTIONS NOW BEFORE YOU...

BY THE COURT: ALL RIGHT. ANYTHING, MR. HARNESS?

BY ATTY. HARNESS: I WOULD REITERATE MY MOTION MADE EARLIER ABOUT...

BY THE COURT: THE POTENTIAL CONFLICT?

BY ATTY HARNESS: YES SIR, THE POTENTIAL CONFLICT. I BELIEVE THAT SOME OF THE TESTIMONY THAT CAME BEFORE THE BAR TODAY WOULD GIVE ME REASON TO BELIEVE THAT THERE MAY BE A CONFLICT IN THE REPRESENTATION OF BOTH GENTLEMEN, PARTICULARLY WITH REFERENCE TO THE TESTIMONY OF THE YOUNG MEN THAT CAME BEFORE THE BAR, AND I WOULD RESPECTFULLY MOVE, AS I HAVE PREVIOUSLY AND ON THOSE SAME GROUNDS, THAT A MISTRIAL BE GRANTED.

BY THE COURT: ALL RIGHT, SIR. I WOULD RESPECTFULLY DENY THE MOTION FEELING THAT THERE IS AMPLE EVIDENCE, PARTICULARLY AFTER REVIEWING THE STATEMENT THAT WOULD INDICATE

THAT THERE IS SUFFICIENT EVIDENCE TO SUBMIT THE MATTER TO THE TRIERS OF THE FACT AND THAT ANY POTENTIAL CONFLICT WAS KNOWN PRIOR TO THE INSTITUTION OF THESE PROCEEDINGS AND THE SELECTION AND SWEARING OF THE JURY.

END OF PAGE 93 OF TRANSCRIPT

(THE JURY IS DISCHARGED AND COURT STANDS IN RECESS FOR A BRIEF PERIOD. AFTER THE RECESS THE COURT ENTERTAINED OTHER MATTERS UNRELATED TO THE INSTANCE CASE, AFTER WHICH THE TRIAL RESUMED AS FOLLOWS)

BY THE COURT: ALL RIGHT, MR. HARNESS.

BY ATTY HARNESS: YOUR HONOR, MY FIRST MOTION WOULD BE A MOTION FOR A NEW TRIAL. THE FIRST GROUNDS OF THAT WOULD BE BASED UPON THE EARLIER MOTIONS FOR MISTRIAL FOR CONFLICT OF INTEREST. I BELIEVE THE COURT MADE AN ERROR IN NOT GRANTING A MISTRIAL AT THAT POINT. I'VE ALREADY MADE A LENGTHY STATEMENT ON THAT. I THINK THAT IS SUFFICIENT FOR THE RECORD AS THE GROUNDS FOR A MISTRIAL. THE SECOND GROUNDS WOULD BE THAT THE STATEMENTS MADE BY THE SOLICITOR IN CLOSING ARGUMENT WERE INFLAMMATORY TO THE DISADVANTAGE OF THE DEFENDANTS AND AS WELL, THAT THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT, THERE WAS NO EVIDENCE OR PARTIC-

ULAR REFERENCE TO CONSPIRACY, OR THAT THERE WAS ANYTHING MORE THAN A MERE ASSOCIATION, OR THAT THEY COUNSELED OR HIRED ANYONE TO COMMIT ANY CRIMES OR PARTICIPATED IN THAT KNOWINGLY. WITH REGARD TO STOLEN GOODS, THAT THERE WAS NO KNOWLEDGE INVOLVED

END OF PAGE 199 OF TRANSCRIPT

ON THE PART OF EITHER ONE OF THESE DEFENDANTS IN PARTICIPATING INTHE CRIME. THAT WOULD BE THE MOTION FOR A NEW TRIAL.

BY THE COURT: ALL RIGHT, THANK YOU. I WOULD RESPECTFULLY DENY THE MOTION FOR NEW TRIAL ON THE GROUNDS AS MADE, THE COURT FEELING THAT THE RULINGS WHICH HAVE PREVIOUSLY BEEN ENTERED UPON THE RECORD WOULD STILL BE APPLICABLE TO THE CURRENT SITUATION. I DON'T BELIEVE THAT THERE HAS BEEN ANY NEW INFORMATION OR ANYTHING NEW INSERTED INTO THE RECORD. IS THAT RIGHT?

BY ATTY. HARNESS: THAT IS CORRECT, YOUR HONOR.

BY THE COURT: SO ON THE GROUNDS AS PREVIOUSLY MADE, I WOULD DENY THE MOTION FOR A NEW TRIAL.

BY ATTY HARNESS: ALL RIGHT, SIR. THE SECOND MOTION, I'D LIKE TO MAKE A MOTION FOR JUDGMENT N.O.V., THAT THE JURY'S DECISION WAS NOT BASED UPON THE FACTS AND

THE EVIDENCE THAT WAS PRESENTED, THAT IT WAS BASED UPON PASSION OR SOME INFLAMMATORY STATEMENTS THAT WERE MADE BY THE SOLICITOR IN CLOSING ARGUMENTS, AND THAT AS A CONSE-QUENCE THE JUDGMENT SHOULD BE OVERTURNED.

BY THE COURT: I WOULD RESPECTFULLY DENY THE MOTION FOR JUDGMENT N.O.V. STATING THAT THE JURY'S VERDICT WAS IN ACCORDANCE WITH ONE LOGICAL EXPLANATION OF THE FACTS AND THE EVIDENCE WHICH WAS INTRODUCED DURING THE COURSE OF THE TRIAL.

BY ATTY HARNESS: ALL RIGHT, SIR. THE THIRD MOTION

END OF PAGE 200 OF TRANSCRIPT

WOULD BE A MOTION TO BE RELIEVED AS ATTORNEY ON THE APPEAL PROCESS ON THE GROUNDS THAT THE JUDGE HAS ALREADY RULED THAT THERE IS A CONFLICT WHICH EXISTS---

BY THE COURT: I SAID THERE MAY BE A CONFLICT---

BY ATTY. HARNESS: YES SIR, THERE MAY BE A CONFLICT. AS A CONSEQUENCE I THINK THAT, ON THE PART OF THE DEFENDANTS, THAT IT WOULD BE BETTER IF TWO OTHER ATTORNEYS WOULD REPRESENT THEM SO THAT THERE WOULD BE NO CONFLICT OR ANY APPEARANCE OF IMPROPRIETY AS FAR AS MYSELF OR ANYONE ELSE INVOLVED IN THE CASE.

BY THE COURT: I WILL NOTE YOUR MOTION TO BE RELIEVED AS COUNSEL, BUT I DO NOT THINK THAT I HAVE THE AUTHORITY AT THIS JUNCTURE TO RELIEVE YOU ON THE BASIS WHICH YOU HAVE INSERTED INTO THE RECORD. THE COURT, IN AN ABUNDANCE OF CAUTION, VERY EARLY IN THESE PROCEEDINGS WHEN THE FIRST OR SECOND

STATE'S WITNESS TESTIFIED, ADMONISHED COUNSEL THAT THERE MAY BE POTENTIAL CONFLICT DEVELOPING AND SUBSEQUENT THERETO DID IN FACT RULE THAT THERE WAS NO CONFLICT, OTHERWISE WE WOULD HAVE DECLARED A MISTRIAL BECAUSE THE TESTIMONY, AS IT DEVELOPED FROM THE STATE'S WITNESSES AND FROM THE TWO DEFENDANTS, ALL INDICATED IN SUBSTANCE THE SAME CIRCUMSTANCES UPON WHICH THE COURT FELT THAT THERE MAY HAVE BEEN A CONFLICT.

END PAGE 201 OF TRANSCRIPT

THE SUPREME COURT OF SOUTH CAROLINA

FRANCES H. SMITH
CLERK

P. O. BOX 11330
COLUMBIA, S.C. 29211

JULY 15, 1982

SAMUEL R. HASKELL, ESQUIRE
314-A NORTH MAGNOLIA STREET
SUMTER, SOUTH CAROLINA 29150

RE: THE STATE V. JESSIE MCLEOD

DEAR MR. HASKELL:

THE COURT HAS THIS DAY REFUSED YOUR PETITION FOR REHEARING IN THE ABOVE CASE IN THE FOLLOWING ORDER:

"PETITION DENIED.

S/ J. WOODROW LEWIS C.J.

S/ BRUCE LITTLEJOHN A.J.

S/ J. B. NESS A.J.

S/ GEORGE T. GREGORY, JR. A.J.

S/ DAVID W. HARWELL A.J.

JULY 15, 1982.

THE REMITTITUR IS BEING SENT DOWN TODAY.

VERY TRULY YOURS,

S/ FRANCES H. SMITH
CM

CLERK

FHS/CM

CC: THE HONORABLE BRIAN P. GIBBES

IN THE

SUPREME COURT OF THE UNITED STATES

TERM 198_

NO. _____

JESSIE MCLEOD,	)	
	)	
PETITIONER,	)	
	)	
-VS-	)	NOTARIZED
	)	STATEMENT
THE STATE OF	)	
SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	

SAMUEL R. HASKELL, JR., ESQUIRE, BEING DULY SWORN, DEPOSES AND STATES:

1. THAT HE IS AN ATTORNEY-AT-LAW DULY LICENSED BY THE STATE OF SOUTH CAROLINA.

2. THAT HE IS APPLYING FOR MEMBERSHIP OF THE BAR OF THIS HONORABLE COURT.

3. THAT ON AUGUST 18, 1982, HE MAILED FORTY (40) COPIES OF THE PETITION FOR CERTIORARI TO THE HONORABLE CLERK OF THE SUPREME COURT OF THE UNITED STATES, BY

DEPOSITING AFORESAID COPIES IN A MAIL-BOX LOCATED IN THE MAIN UNITED STATES POST OFFICE IN COLUMBIA, SOUTH CAROLINA, WITH FIRST-CLASS POSTAGE PREPAID, AND PROPERLY ADDRESSED TO THE CLERK OF THIS COURT WITHIN THE TIME ALLOWED FOR FILING.

4. THAT HIS STATEMENT IS MADE AND FILED IN ACCORDANCE WITH RULE 28.2 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

Samuel R. Haskell, Jr.

SAMUEL R. HASKELL, JR.
314 NORTH MAGNOLIA ST.
SUMTER, SOUTH CAROLINA
29150

AUGUST 12, 1982
COLUMBIA, SOUTH CAROLINA

SWORN TO BEFORE ME THIS
6th DAY OF AUGUST, 1982.

Joan R Bass

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:

IN THE

SUPREME COURT OF THE UNITED STATES

TERM 198_

NO. _____

JESSIE MCLEOD,	)	
	)	
PETITIONER,	)	
	)	
-VS-	)	NOTARIZED
	)	
THE STATE OF SOUTH CAROLINA,	)	STATEMENT
	)	
	)	
RESPONDENT.	)	

SAMUEL R. HASKELL, JR., ESQUIRE, BEING DULY SWORN, DEPOSES AND STATES:

1. THAT HE IS AN ATTORNEY-AT-LAW, DULY LICENSED BY THE STATE OF SOUTH CAROLINA.

2. THAT HE IS APPLYING FOR MEMBERSHIP OF THE BAR OF THIS HONORABLE COURT.

3. THAT ON AUGUST 18, 1982, HE MAILED THREE (3) COPIES OF THE PETITION FOR CERTIORARI TO THE HONORABLE DANIEL R. MCLEOD, LEAD COUNSEL FOR THE RESPONDENT,

BY DEPOSITING AFORESAID COPIES IN A MAILBOX LOCATED IN THE MAIN UNITED STATES POST OFFICE IN COLUMBIA, SOUTH CAROLINA, WITH FIRST-CLASS POSTAGE PREPAID AND PROPERLY ADDRESSED TO THE HONORABLE DANIEL R. MCLEOD WITHIN THE TIME ALLOWED FOR FILING.

4. THAT THIS STATEMENT IS MADE AND FILED IN ACCORDANCE WITH RULE 28.3 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

5. THAT ALL PARTIES REQUIRED TO BE SERVED IN THIS CASE HAVE BEEN SERVED, TO WIT:

THE HONORABLE DANIEL R. MCLEOD
ATTORNEY GENERAL OF SOUTH CAROLINA
POST OFFICE BOX 11548
COLUMBIA, SOUTH CAROLINA 29211

Samuel R. Haskell, Jr.

SAMUEL R. HASKELL, JR.
314 NORTH MAGNOLIA ST.
SUMTER, SOUTH CAROLINA
29150

AUGUST 18, 1982
COLUMBIA, SOUTH CAROLINA

SWORN TO BEFORE ME THIS

18th DAY OF AUGUST, 1982.

Jessie L. Bevis

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 7/3/89